

MINUTE ITEM

18. FORM OF OIL-AND-GAS LEASE AND LEASING PROCEDURE, SANTA BARBARA COUNTY - W.O. 3537, W.O. 3557.

In presenting Calendar Item 18 attached, the Executive Officer reviewed the alternative types of lease offers considered by the staff and stated that the staff proposal included a recommendation that the Commission first rescind all prior partial approvals with respect to the combined bid-lease form which were adopted at the meeting of the Commission on October 27, 1960.

UPON MOTION MADE BY COMMISSIONER CARR, DULY SECONDED, AND CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED WITH THE UNDERSTANDING THAT IT WOULD HAVE BEEN APPROVED BY COMMISSIONER ANDERSON IF HE HAD BEEN PRESENT:

1. THE COMMISSION RESCINDS ALL PARTIAL APPROVALS WITH RESPECT TO THE COMBINED BID-LEASE FORM, W.O. 3537, SANTA BARBARA AREA, WHICH WERE ADOPTED AT ITS MEETING OF OCTOBER 27, 1960;
2. THE COMMISSION APPROVES AND ADOPTS, PURSUANT TO DIVISION 6, PART 2, CHAPTER 3, ARTICLES 2 AND 4 OF THE PUBLIC RESOURCES CODE, THE COMBINED BID-LEASE FORM, REFERRED TO AS EXHIBIT "D", A COPY OF WHICH IS HEREBY MADE A PART OF THESE MINUTES BY REFERENCE TO THE OFFICIAL FILES OF THE COMMISSION, AS THE FORM TO BE UTILIZED FOR TIDE-AND-SUBMERGED-LAND OIL-AND-GAS LEASE-OFFERS.
3. THE COMMISSION DETERMINES THAT IT IS THE INTENT TO RECEIVE BIDS FOR INDIVIDUAL TIDE-AND-SUBMERGED-LAND OIL-AND-GAS LEASES AT INTERVALS OF NOT LESS THAN THIRTY DAYS IN AS CONTINUOUS A SEQUENCE AS IS REASONABLY PRACTICABLE, WITH THE SEQUENCE OF OFFERING SPECIFIC AREAS TO BE DETERMINED SOLELY BY THE COMMISSION;
4. THE COMMISSION AUTHORIZES THE INCLUSION IN EACH LEASE-OFFER OF AN OPTION TO ALL BIDDERS EXCEPT THE APPARENT HIGH BIDDER TO HAVE THE REQUIRED BID DEPOSIT REFUNDED UPON WRITTEN REQUEST AND RELINQUISHMENT BY SUCH BIDDER OF ANY RIGHTS OF INTEREST IN THE PARTICULAR LEASE-OFFER.

Attachment:
Calendar Item 18 (8 pages)

Reference:

Bid-Lease Form, Exhibit "D", copy of which is on file in the offices of the Commission.

See minute Item 27, pg. 9379, meeting of November 6, 1963, for amendment of Paragraph 22 of bid-lease form. E. Denny

SUPPLEMENTAL CALENDAR ITEM

18.

FORM OF OIL-AND-GAS LEASE AND LEASING PROCEDURE, SANTA BARBARA COUNTY -
W.O. 3537, W.O. 3557.

On October 27, 1960, the Commission deferred action on (1) adoption of a combined bid-lease form for oil-and-gas lease-offers, and (2) authorization for publication of notice of intention to receive bids for specified parcels of tide and submerged lands in Santa Barbara County.

The staff was requested to report on an evaluation of three alternative types of lease-offers. (A fourth type--auction bidding--has been suggested. However, auction bidding is not authorized by statute for Commission oil-and-gas leases.)

The types of lease-offer evaluated are:

- (1) unconditional bidding on a multiple lease-offer,
- (2) conditional (or contingent) bidding, and
- (3) sequential bidding.

In summary, evaluation of all factors relating to unconditional bidding ((1) above) indicates that it might be impossible to establish optimum conditions "in the best interests of the State" for this type offer. Also, the time requirements of the processing schedule (prescribed primarily by statute) result in a spasmodic lease-offer schedule which makes long-range planning ineffective for both the State and the bidders. Conditional (or contingent) bidding (2), with conditions included at the option of the bidder, would have a high potential for producing a series of offers in which the high bidder could not be identified as required by statute. The office of the Attorney General has reported on the legality and feasibility of conditional (or contingent) cash-bonus bidding. Again, in summary, there is no legal prohibition against the invitation of conditional (or contingent) bids. However, unless permissible conditions were limited and prescribed by the Commission (thereby limiting any alleged advantage to a conditional bidder), there would be some possibility of successful legal attack upon the awarding of a particular lease. In addition, it appears that there are likely to be substantial administrative difficulties and drawbacks in any system of conditional bidding. Evaluation of sequential bidding procedure (3) shows that this system can have the highest degree of practicability simultaneous with being "in the best interests of the State" and the best interests of the majority of potential bidders.

A comparative schedule of the principal factors and contentions relating to conditional (or contingent) bidding and sequential bidding is attached as Exhibit "A". A tabulation of criteria for effective sequential bidding is attached as Exhibit "B", and comparisons of schedules for sequential bid offers at two-hour intervals and thirty-day intervals are attached as Exhibit "C". The combined form of bid-lease proposed for future lease-offers is attached as Exhibit "D".

SUPPLEMENTAL CALENDAR ITEM 18. (CONTD.)

IT IS RECOMMENDED THAT THE COMMISSION:

1. APPROVE AND ADOPT, PURSUANT TO DIVISION 6, PART 2, CHAPTER 3, ARTICLES 2 AND 4 OF THE PUBLIC RESOURCES CODE, THE COMBINED BID-LEASE FORM ATTACHED HERETO AS EXHIBIT "D" AS THE FORM TO BE UTILIZED FOR TIDE-AND-SUBMERGED-LAND OIL-AND-GAS LEASE-OFFERS.
2. DETERMINE THAT IT IS THE INTENTION OF THE COMMISSION TO RECEIVE BIDS FOR INDIVIDUAL TIDE-AND-SUBMERGED-LAND OIL-AND-GAS LEASES AT INTERVALS OF NOT LESS THAN THIRTY DAYS IN AS CONTINUOUS A SEQUENCE AS IS REASONABLY PRACTICABLE, WITH THE SEQUENCE OF OFFERING SPECIFIC AREAS TO BE DETERMINED SOLELY BY THE COMMISSION.
3. AUTHORIZE THE INCLUSION IN EACH LEASE-OFFER OF AN OPTION TO ALL BIDDERS EXCEPT THE APPARENT HIGH BIDDER TO HAVE THE REQUIRED BID DEPOSIT REFUNDED UPON WRITTEN REQUEST AND RELINQUISHMENT BY SUCH BIDDER OF ANY RIGHTS OF INTEREST IN THE PARTICULAR LEASE-OFFER.

EXHIBIT "A"

CONDITIONAL (OR CONTINGENT) BIDDING

Pro -

1. Greater competition because more parcels available at one time develop greater interest.
2. Opportunity to acquire larger areas (particularly adjoining parcels) could permit lower joint development costs, and therefore bidder could include a portion of estimated saving in higher bids per parcel. Opportunity for larger area acquisition is also contended to be a necessity for justification of large-scale, costly, offshore exploration.

Contra -

1. High probability that conditions inserted at option of bidder cannot be evaluated to determine the high bidder as required by statutes (Section 6836, Public Resources Code), or disagreement on bid evaluation can lead to litigation (during litigation bid deposits would be frozen).
2. Same result can be obtained from sequential bidding. Successful bidder on first parcel would generally be in a better position to justify a high bid for a second adjoining parcel (more so than other bidders) if statement No. 2 under "Pro" heading is correct.

SEQUENTIAL BIDDING

Pro -

1. One lease offer at a time would permit more effective evaluation of the individual merits by both the bidder and the State.
2. Competition should be enhanced because of restricted supply (as long as the supply isn't restricted to the point of stifling active, continuing interest).
3. Control by the State of timing of continuing lease offers could eliminate or minimize conflicts and split-interest because of other governmental lease offers.
4. No bid-evaluation problems for the Commission because there would not be any basis for conditional bidding.
5. More industry-interest should be obtained in a continuing leasing program in lieu of the hitherto spasmodic leasing program.

Contra -

SEQUENTIAL BIDDING - contd.

Pro -

6. Bid capital for single lease offers would generally be in smaller amounts than required for multiple offers, and would be required for shorter periods of time. Where bidders might prefer to budget exploration capital on an annual (or other extended) basis, this would not require solution of any new complex factors in the knowledge that a continuing leasing program had been authorized by the Commission. Actually, a continuing leasing program would afford a more effective planning base than the previous spasmodic leasing program.

7. Elimination of the bases for the contra contention would not produce any result of specific advantage to or in the best over-all interest of the State.

Contra -

6. Arrangements for financing a series of single lease bids (over an extended period of time) could be more complex than acquiring bid capital for a one-time group of lease offers.

7. Sequential bidding would eliminate or minimize the opportunity for a bidder on multiple simultaneous offers to acquire a lease at a comparatively low bid resulting from a limit on the total capital available at the time of the particular multiple offer.

8. Individual lease offers would concentrate competition and eliminate possibility of acquisition of additional parcels at a compensating price. (See No. 7 foregoing.) The question of whether leases would be "overpriced" under this procedure would be answered by the receipt of adequate bids or, conversely, no bids for parcels with a generally accepted potential value.

8. The minimum costs of a lease are prescribed by the Commission pursuant to statutory requirements. The actual cost of a lease is set by the high bidder himself.

SEQUENTIAL BIDDING - contd.

Pro -

Contra -

9. Concurrent offers of multiple parcels would result in spasmodic lease-offer schedules, as has been the case heretofore.

EXHIBIT "B"

CRITERIA FOR EFFECTIVE SEQUENTIAL BIDDING

1. No deviations from bid form, or addition of conditions by bidder to be permitted.
2. Bidding to be restricted to one biddable factor.
3. Time between bids to be limited to minimum required for bidders to have knowledge as to apparent high bidder on preceding parcel offer and for required staff processing. (Normal anticipation if high bidder is found to be not qualified would be the rejection of all bids for the particular parcel.)
4. Time of bid closing to be adjustable on staff recommendation, to avoid conflict with other large lease sales.
5. Sequence for offering parcels is not to be automatic, but to be recommended by staff.
6. Sequence of bid offers to be reasonably regular and continuous.

EXHIBIT "C"

SCHEDULES FOR SEQUENTIAL BID OFFER

The requirements of criterion No. 3 for effective sequential bidding can be met by procedures encompassing a wide range of processing time. Reasonable limits evaluated in the following could range from two hours between successive bids to thirty days between successive bids. In either event, the Commission would have to specify in advance the parcel locations and the sequence in which the parcels would be offered for bid.

SEQUENTIAL BIDS AT TWO-HOUR INTERVALS

Advantages

1. Bids could be received and opened on four or less parcels on one day. Therefore, capital for bidding on up to four parcels could be arranged for essentially one multiple lease-offer.

Disadvantages

1. Provision of proper bid deposits for the second through the fourth bid would present mechanical and security problems to the bidders.
2. Prearranged financing could impose bidding limitations which the bidder could eliminate during a longer interval between bids.
3. Bidders on the second and following offers could not know with certainty that they had succeeded or failed on preceding bids because the ostensible high bidder could be found not to be qualified.

SEQUENTIAL BIDS AT THIRTY-DAY INTERVALS

Advantages

1. After establishment and bidder acceptance of a routine for lease offers, confirmation of the qualification of the ostensible high bidder on a preceding lease offer could (generally) be announced in advance of closing bids on the next following lease offer.

Disadvantages

1. Continuing bid financing for one parcel at a time would be required. This disadvantage could be overcome by financing for a series of lease offers after adoption of a Commission program for continuing sequential leasing.

SEQUENTIAL BIDS AT THIRTY-DAY INTERVALS - contd.

Advantages

2. Some prior delays in lease offers were based on the concern that offering too much area at one time could result in a "dilution" of the bidding through attempts of individual bidders to cover the complete offering.
3. The problem of holding bid capital together would be minimized if the Commission determined that the leasing program would be a reasonably continuous activity.

Disadvantages